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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulations	)	

COMMENTS
of the
NATIONAL RURAL TELECOM ASSOCIATION
and the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

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SUMMARY

The Associations explain in these comments why the Commission must coordinate all aspects of reform of access charges with its Universal Service support rules. Because access revenues constitute the largest component of the revenues of small and rural telephone companies, there are potentially significant universal service consequences from any material disruption of those revenues. Accordingly a definitive new access charge regime must await final resolution of the universal service support mechanism for rural telephone companies in which the cumulative effect of the various changes can be evaluated. Similarly, any interim changes in access rules must not undermine the transitional universal service support mechanism now in effect. Separations reform must also be coordinated with the Universal Service and Access Reform rules.

The member LECs of the Associations recognize, however, that the environment and industry structure are rapidly changing and that failure to adapt will put revenues from their higher volume, lower cost customers at risk. These companies need rules which provide transitional ways to accommodate differences in the circumstances of rural LECs. Specifically, the Commission must begin now to allow incumbent LECs to price and design their service offerings in response to marketplace forces, which necessarily means less involvement of the Commission in making the business decisions of the LECs for them. Significant flexibility in rate structure design needs to be a major goal of any access "reform."

Congress recognized the especially difficult issues involved with the introduction of competition into the service areas of rural LECs and accordingly structured Section 251(f)(1) to require a state commission to make a public interest finding before the full spectrum of incumbent LEC interconnection obligations would become applicable to each rural LEC. The provision allows for rational accommodation of the large variation in circumstances faced by rural LECs, but it does not inhibit competition where there is a public interest benefit. There is no doubt that state commissions will terminate the exemption in some cases and preserve it in others. That decision is left to the states, however, not this Commission. In either event, the incumbent rural LEC will need to have appropriate access charge structures available.

The Associations agree that the efficiency of the cost recovery system can be improved by increasing the proportion of common line costs that are recovered through flat rate charges. A similar, but not identical access charge structure to that of the price cap companies may achieve this objective, provided sufficient and appropriate safeguards for universal service are included. Among the safeguards required is careful compliance with the requirement of Section 254(b)(3) for reasonably comparable rural and urban rates and interexchange rates including any PICC charges passed through to end users which are consistent with the geographic averaging requirements of Section 254(g).

Because Rate of Return LEC costs are significantly higher on average than Price Cap companies' cost, simply extending the Price Cap SLC and PICC structure to them would raise rates immediately to the ceilings. Further, unlike Price Cap companies, rate of return LEC PICCs and the CCL charge will not disappear. Therefore any imposition of PICC charges and

increased SLC charges must include a ceiling at the nationwide average of the Price Cap companies, with the remaining common line cost recovered through the existing usage based charge, or, if necessary, universal service support.

The Price Cap access reform rules established different SLC ceilings for "primary" and "non-primary" residential lines, although the Commission has never completed its separate rulemaking to define these terms. The Associations believe that this artificial distinction is both bad public policy and administratively infeasible. The significant higher SLCs which would be placed on "non-primary" lines would discourage growth in second lines which benefits all subscribers by reducing per-line costs while encouraging participation by residential customers in the Information Age by facilitating Internet access.

The Commission has taken steps to reduce substantially and eventually eliminate the carrier common line charge for Price Cap carriers and now proposes to shift some recovery to PICCs and increased SLCs for rate of return LECs. It would be inconsistent with these actions for the Commission to adopt its other proposal to shift cost recovery for currently traffic sensitive elements to the carrier common line charge. However attractive in isolation, reassignment of line side port costs and the residual TIC to common line would exacerbate the disparity in rates between price cap and rate of return carriers, and frustrate the objective of reducing the charge. Since the carrier common line charge will not go away any time soon for rate of return LECs, adding the TIC charge to it will not eliminate the TIC either.

The Commission should also not allocate general support facility costs to billing and collection. There is no information on the record or readily available to show that the amounts are significant, which was the finding prerequisite to the allocation for Price Cap companies.

The ARMIS data based conclusions in that proceeding have no relevance for rate of return companies, many of whom use third party vendors rather than general purpose computers for billing and collection.

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The National Rural Telecommunications Association (NRTA) and the National Telephone Cooperative Association (NTCA) (hereafter, the Associations) submit these comments in response to the June 4, 1998 Notice of Proposed Rulemaking (NPRM).[1] The Associations' members are local exchange carriers ("LECs") providing access to interexchange carriers (IXCs) throughout rural America under the rate of return (ROR) regulatory regime. They are also all "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").[2]

The Associations urge the Commission not to attempt a definitive resolution of the crucial access structure issues presented here. Any sustainable answer or interim adjustment

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[1] Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 98-77, FCC 98-101 (rel. June 4, 1998).

[2] 47 U.S.C. §153(47).

must adhere to the standards of the 1996 Act, with particular emphasis on its universal service provisions. The Commission's challenge here is to ensure -- at the same time -- reasonable rural and urban rate and service parity and nationwide telecommunications advances, while reinforcing the incentives and enforcing the mandate for nationwide averaging of all interexchange carrier charges.

I. THE COMMISSION SHOULD NOT ADOPT ANY ASPECTS OF THE PRICE CAP RULES FOR ROR CARRIERS UNLESS THEY ARE CONSISTENT WITH THE TRANSITIONAL RURAL UNIVERSAL SERVICE PLAN AND THE ULTIMATE UNIVERSAL SERVICE FRAMEWORK

A. Resolution of Universal Service Issues is a Necessary Prerequisite for Sustainable Access Charge Reform

The Commission's stated goal in initiating this proceeding is "fostering competition and deregulation" in telecommunications markets.[3] The Associations recognize the legitimacy and importance of this goal, but believe reform for ROR carriers can only be implemented lawfully if the new access rules also preserve and advance universal service, as §254 of the 1996 Act requires.[4] The ROR carriers that make up the Associations' membership operate in high cost areas that typically obtain support from explicit and implicit interstate universal service mechanisms. Moreover, many members derive more than 60% of their revenues from interstate and intrastate access services.[5] The member companies and the consumers they serve will become the unintended victims of telecommunications restructuring under the 1996 Act, if

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[3] NPRM at para. 1.

[4] 47 C.F.R. § 254.

[5] 1996 Statistical Report of Rural Telecommunications Borrowers, USDA, RUS, Information Publication 300.4.

reformed access rate structures fail to take account of the high costs of providing service to rural customers. Consumers in high cost areas will plainly be worse off in the wake of the 1996 Act if reform for ROR carriers results in higher overall rates for the consumers and in lower revenues for the carriers . If changes result in revenue losses without appropriate transitions, the unintended consequences will be even more harsh for rural telecommunications. In contrast, Congress intended the transition to competition to benefit all U.S. customers. Accordingly, the Associations urge the Commission not to try to complete a new definitive access charge regime for rate of return LECs until it has finalized an effective federal universal service mechanism (and the complementary separations framework) for the rural areas that the Associations' ROR membership serves.

The Commission cannot assume (para. 6) that universal service issues have been suitably resolved and will not be affected by access changes. In fact, the Commission has recently (a) delayed the scheduled completion and implementation of a non-rural proxy cost methodology and commencement of the subsequent plan proceeding and (b) reopened Joint Board consideration of core questions about universal service support. Reopened issues include the methodology for determining support amounts, the appropriate state support and rate restructuring responsibilities, what share carriers should contribute and how carriers should recover their contributions from end users.[6]

It is also still too early to tell whether access reform for price cap carriers results in any consumer benefits. There is no evidence that IXCs have passed on the value of 1998 access

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[6] In the Matter of Joint Board on Universal Service, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998).

reductions to their long distance customers. In fact, AT&T has just announced a Three dollar minimum monthly charge for new residential long distance customers.[7] It appears that, instead of passing on the benefits of reduced per minute charges to their customers, IXCs in all regions of the country have been quick to pass through the new Presubscribed Interexchange Carrier Charges (PICCs) as new "national access fees," still without passing through the benefit of their reduced access charges to all their customers.[8] Customers and Congressional leaders have protested the PICC implementation strategies. The Commission will need to proceed with caution to ensure that the public outrage over the results of its first round of reform is not repeated with ROR of return carriers. ROR carriers' customers will realize even fewer benefits and experience even higher rates if new structures are implemented before the Commission ensures that access charge changes do not reduce IXC charges only to increase consumers' costs.

B. Any Interim Access Charge Changes Must Not Undermine the Commitment to "Sufficient" Transitional Universal Service Support

Rural high cost support issues pending in the Universal Service docket may not be resolved until beyond 2001. Commenting on the transitional plan for rural companies, recently, Chairman Kennard emphasized that "2001 is not a target date." He said, "High cost support for rural telephone companies is working well, and it should not be changed until we know that the

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[7] AT&T News Release, August 14, 1998.

[8] Letter from William E. Kennard to Bert Roberts, CEO, MCI; William T. Esrey, Chairman & CEO, Sprint Corporation; and Michael C. Armstrong, Chairman & CEO, AT&T requesting information "explaining whether and how your company has passed reductions in usage-sensitive access charges along to consumer." February 26, 1998.

changes we implement will provide adequate and appropriate high cost support."[9] The Chairman's approach is consistent with the statutory requirement of "specific, predictable and sufficient"[10] federal support, and it recognizes that this requirement takes precedence over an artificially imposed target date.

The decision to adopt a transitional plan was guided by the concern that a hasty decision to adopt support mechanisms based on forward looking economic costs might harm rural customers and prevent recovery of prudently incurred investment by rural carriers.[11] The risk of under recovery of embedded investment is also an issue in this proceeding, and it is critical that both the new support mechanisms and access reform recognize that universal service will be harmed if inconsistent access restructure, rate rebalancing and support result in unaffordable local rates, service discontinuance or the scaled back deployment of advanced services in rural areas. Until the Commission determines what type of mechanisms replace those currently used for high cost support for rural companies, an access reform decision that is more than temporary or does not account for potential changes in support cannot meet the requirements of Section 254.

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[9] Statement of Chairman William E. Kennard at Field Hearing on Universal Service in Anchorage, Alaska, before Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate, July 1, 1998.

[10] 47 U.S.C. § 254 (b) (4).

[11] See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 at para. 291 (1997) (Universal Service Order). Access Charge Reform; Price Cap Performance Review; Transport Rate Structure; and Pricing End User Common Line Charges, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 at para. 9 (1997) (Access Reform Order).

Although the Commission should not "reform" access charge structure for ROR carriers while universal service support is in regulatory limbo, the Commission correctly recognizes (para. 2) that some rate of return LECs are disadvantaged now by the existing access structure, particularly when a rate of return LEC's few high volume customers are selectively targeted. The Associations recognize that such ROR carriers need flexibility and new rate structures to address their emerging competitive markets. Some of the Associations' members urge changes in the access charge scheme because it hampers their ability to adapt to a changing environment. The Commission should look for interim, transitional ways to accommodate differences in the circumstances of ROR carriers' markets and their need for flexibility to adapt to competition where it exists or is evolving.

The Associations are also aware that the Commission may be unwilling to sequence all access reform after or in conjunction with completing the necessary universal service mechanisms, as we believe it should. Thus, should the Commission conclude that it must proceed with rule changes at this time, the Associations urge the adoption of an access rate structure that includes a combination of flat charges and per minute charges, treats primary and secondary lines in the same manner and ensures that the higher CCL rates of carriers serving high cost carriers do not lead to the discontinuance of service to rural areas or the deaveraging of interstate interexchange rates. Moreover, since compliance with the requirements of Section 254 cannot be ensured by the isolated treatment of access reform, any changes made now must be (a) consistent with the rural LEC transitional universal service plan, (b) interim, (c) revenue neutral and (d) open for reevaluation once the extent and nature of support is resolved.

One of the main reasons for initiating access reform is the Commission's intention to make explicit remaining implicit support flows embodied in access charges.[12] Hence, if the Commission is to keep the commitment to maintain sufficient support for rural LECs, which generally remain under ROR regulation, it cannot make interim changes in access charge structure without ensuring that it is not eliminating (as opposed to replacing) implicit support or interfering in any way with the transitional rural high cost support plan. Since the Commission's purpose here (para. 5) is to make rate structure changes, any interim (or long term) changes should be revenue neutral.

To avoid undermining the effectiveness of transitional support -- which the NPRM presumes (para. 6) will be stable -- the Commission must also be cautious not to make interim changes affecting rate structure or levels that will drive IXCs and customers to bypass rate of return LECs simply to benefit from cost differences due to regulatory pricing requirements. Such uneconomic bypass syphons off revenues that contribute to area-wide universal service. In practice, this will require that ROR carriers gain a measure of pricing flexibility even during an interim access regime. Unless they can compete fairly, they will be unable to stem the loss of revenues and implicit contributions toward universal service caused by losing their most lucrative customers to competition.

The Associations describe an interim plan in Section III that should be able to coexist comfortably with the transitional rural LEC universal service plan. The Commission will then have time to complete the complicated process of reforming universal service and integrating its

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[12] See, NPRM, para. 9.

whole implementation package.

II. NON-INTERIM ACCESS REFORM FOR ROR LECs MUST BE PART OF A COMPREHENSIVE PACKAGE OF CONSISTENT AND SUSTAINABLE UNIVERSAL SERVICE, PRICING FLEXIBILITY, SEPARATIONS AND COMPETITION-ENHANCING PROGRAMS.

A. Substantial, Interrelated, But Unresolved Questions Necessitate a Comprehensive Solution Incorporating ROR Access Charges Reform

We have explained that access charge reform measures at this time must be temporary, at most, and consistent with transitional universal service mechanisms because longer term access structure reform cannot be accomplished until long term universal service issues are resolved. The full effects of access structure changes and the efficacy of universal service, in turn, must mesh with the other gears of the new competition-driven telecommunications engine emerging from the blueprints Congress furnished in the 1996 Act. Here again, the cumulative effects of the changes must achieve Congress's three-part purpose: (1) competition, (2) nationwide telecommunications, information and advanced network availability on reasonably equal terms, and (3) dwindling regulatory interference in telecommunications businesses. Throughout the implementation of the Act, the Commission has emphasized the essential linkage among these three national policy commitments, acknowledging that lawful implementation turns on a "trilogy" of actions in its Local Competition, Universal Service and Access Charge Reform proceedings.[13] Accordingly, the Commission has been working not only towards a

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[13] Universal Service Order, para. 4 and 291, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (Local Competition Order); Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996), Petition for Review pending and partial stay granted, sub nom. Iowa Utilities Bd. v. FCC, 109 F 3d 418 (8th Cir, 1996) Certiori granted sub. nom. AT&T Corp. v. Iowa Utilities Bd.; Access Charges Order, para. 9.

> pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition,[14]

but also, concurrently, to "ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition."[15] Since "[u]niversal service reform is vitally connected to the local competition rules . . . ," the Commission acknowledged the need to "rework the subsidy system to guarantee affordable service to all Americans in an era in which competition will be the driving force in telecommunications."[16] While looking to "[c]ompletion of the trilogy, coupled with the reduction in burdensome and inefficient regulation we have undertaken pursuant to other provisions of the 1996 Act, [to] unleash marketplace forces that will fuel economic growth," the Commission has also started to reform its jurisdictional separations rules[17] and to explore some of its deregulation and forbearance obligations.[18]

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[14] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §§ 151 et seq. See Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess 113 (1996).

[15] Local Competition Order at para. 7.

[16] Ibid.

[17] Local Competition Order at para. 7., at para. 11; see also Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120 at para. 11 (1998) Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, FCC 97-354, CC Docket No. 80-286, 1997 FCC LEXIS 5554 (rel. October 7, 1997)(Separations NPRM).

[18] The Commission has provided extreme flexibility to IXCs. Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the

The Commission should be equally astute in seeing that the implementation of the 1996 Act requires comprehensive resolution of these crucial policy issues as it was about combining its consideration of access charge, separations and universal service modifications into a single proceeding when it first developed access charges and explicit universal service support.[19] These issues remain inextricably linked today, and none has been resolved yet. However, the Commission has failed to coordinate, let alone consolidate, these intricately interacting policy components.

B. Separations Reform is also Linked to the Trilogy Issues

The 1996 Act mandates particular policy outcomes that include several of special importance to rural universal service providers: affordable and reasonable rates for all customers, nationwide infrastructure development, "reasonably comparable" rates, services and access to advanced telecommunications and information services for rural and urban customers, and nationwide rural and urban interexchange rate averaging.[20] To fit all the pieces together and evaluate the overall results, the Commission must consider and adopt interstate access reforms as part of a comprehensive package that will achieve the comprehensive purposes of the 1996

Communications Act of 1934, as amended. Second Report and Order, 11 FCC Rcd 20,730 (1996) (Tariff Forbearance Order), stayed sub nom. MCI Telecommunications Corp. v. FCC, Consolidated Cases 96-1459, 96-1477, 97-1009, Feb 13, 1997; Order on Reconsideration, 12 FCC Rcd 15,014 (1997), further recon. pending. The Associations are consequently disappointed that the NPRM (para. 5) declined to explore pricing flexibility and relaxation of regulation for ROR LECs until some future phase.

[19] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2953, (May 19, 1987) ("comprehensive and integrated program for addressing difficult issues related to common line cost recovery that have been studied and debated for many years, but left unresolved.")

[20] 47 U.S.C. §254(b) (g).

Act.

Jurisdictional separations has long been the foundation stone for federal universal service support. The separations rules also control what costs interstate charges must recover. It is of the utmost importance to rural service and development, given the longstanding failure of market forces alone to further rural consumers' interests, that the selected long term access charge plan -- as it operates in tandem with the universal service mechanism, separations procedures and costing methodology still to be adopted by the Commission -- will fulfill the Congressional mandates in §254, as well as the Act's pro-competition and deregulatory purposes.

The Commission convened its separations Joint Board with a reminder to participants that the "proceeding is one of a number of interrelated proceedings through which we intend to advance competition, reduce regulation in telecommunications markets and, at the same time, preserve and advance universal service to all Americans" and instructions to "bear in mind the relationship among these parallel proceedings when developing and explaining . . . proposals for separations reform."[21] That admonition is equally relevant for access charge proposals: The effect of decisions here about how to impose and collect interstate costs cannot be responsibly evaluated with future separations rules unknown. Indeed, adopting any significant jurisdictional shifts after adopting either access or universal service revisions will almost certainly invalidate any prior Commission findings that interstate access charges or federal universal service support will be sufficient under the law. This overlap independently demonstrates that the NPRM's complacent assumption that its universal service order has already

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[21] Separations NPRM, para. 11.

adopted an adequate universal service support mechanism (NPRM, para. 8) is without basis in fact.

C. Deregulation Requires More than Vague Promises of Future Exploration

For universal service, rural infrastructure development and competition to thrive simultaneously, as Congress intends, the Commission must not only encourage the emergence of viable competition. It must also suit its actions to its belief that competition is the best way to achieve economic efficiency, optimal pricing and innovation. Specifically, the Commission must begin now to allow incumbent LECs to price and design their service offerings in response to marketplace forces. Maintaining and even increasing the costly and burdensome level of federal regulatory interference with the business decisions of ROR LECs — as the Commission has often done in implementing the competition mandate[22] — may appear to encourage competition by stimulating entry. However, entry to take advantage of regulator-spawned arbitrage opportunities and the other distorted entry signals from one-sided regulation does not lead to the genuine and sustainable competitive marketplace conditions Congress had in mind. Indeed, it is axiomatic that the central enforcement vehicle for the nation's competition policy -- the antitrust

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[22] See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96-115) and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended (CC Docket No. 96-149, Second Order and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (rel. Feb 26, 1998); Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No 95-116, 11 FCC Rcd 8352 (1996) (First Report and Order), In re Telephone Number Portability, CC Docket No. 95-116, Third Report and Order FCC 98-82 (rel. May 12, 1998) (Cost Recovery Order), Local Competition Order. See. also, In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, CC Docket No. 98-56 (rel. April 17, 1998).

laws -- are designed to protect competition, not competitors.[23]

D. A Comprehensive Long Term Plan that (a) Modifies the Price Cap LEC Access Structure Sufficiently to Reconcile ROR LECs' Higher Common Line Costs with §254 and (b) Allows ROR LECs to Respond to Competition Can Satisfy the 1996 Act

The Associations urge an "expanded trilogy" approach because LECs can only fulfill their obligation to provide universal service if they are able to recover their total costs of providing service in a manner consistent with the statutory standards. LECs have two basic classes of service offerings: retail to local service customers and wholesale to access or competitive carrier customers. Any cost not recovered from the wholesale customers must be recovered from either the end user or universal service support.

The Associations recognize that their member LECs will increasingly face competition for both retail and wholesale customers. We also recognize that the LEC industry must continue to evolve at an accelerating rate with the deployment of packet switching and xDSL technology in response to growing demand for higher speed access to information services. For small and rural telephone companies to meet the 1996 Act's universal service goals, they need access rate structures and cost recovery levels which encourage continued use of their services rather than forcing customers to nearby large LECs. A reliable and adequate stream of access revenues also reduces the need for universal service support to ensure local rates that pass muster under the affordable and comparable criteria of the Act.[24]

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[23] See, Brown Shoe v. United States, 370 U.S. 294, 320 (1962) (pointing to "congressional concern with the protection of competition, not competitors").

[24] 47 U.S.C. 254(b)(3) and (I). This is not to suggest that there is any merit to the repeated claims of the IXCs that somehow all access charges are "implicit" support.

E. Section 251(f)(1)(2) Embodies Congress's Balance of its Competition and Universal Service Objectives for Rural Telephone Companies

The Commission's questions about whether the §251(f) rural exemption, suspension and modification provisions are thwarting competition miss the mark. The NPRM appears to assume that the 1966 Act ordained stimulating "competition" as its paramount mandate and anointed this Commission to exorcize any less-than-competitive arrangements. In reality, the statutory commitment to competition, while enthusiastic, is not monolithic. Instead, Congress enacted a number of safeguards including those in §§214 (e), 251 (f), 253 (f) and 254 to accommodate the significant differences in the market facts confronting rural markets and incumbent universal service providers.

The varied circumstances facing these companies, not the least of which is the variation in approach and philosophy of their respective state commissions, include some rural LECs service areas which are (and will likely remain) completely unattractive to new entrants for a long time. In large portions of the country, for example, there is no population growth or access line growth. Other areas are seeing very rapid out-migration to rural areas. Some areas lack population centers with sufficiently large concentrations of customers to lower service costs. Other areas have one or two large volume telecommunications users that generate a large share of their revenues. And other areas have mostly residential customers and/or a depressed economy.

Because lower population density and traffic volume raise the per-line and per-minute costs of serving rural telephone company areas, Congress provided a rural exception to the Commission's duty to preempt barriers to competition,[25] a higher standard to qualify as a second

[25] §253(f).

rural carrier eligible for high cost support,[26] and — most pertinent to ROR access reform — established the §251(f) exceptions to the "interconnection" mandates designed to jump start competition by opening and unbundling ILEC facilities for the use and benefit of their competitors. Contrary to deputizing this Commission to judge whether §251 impedes competition in rural ILEC areas, Congress left future adjustments in the balance between universal service and competition in rural areas in the hands of state regulators. Moreover, Congress gave the states specific standards aimed at avoiding economic harm, non-feasible technical demands and barriers to universal service for rural ILECs and their customers[27] to apply before imposing the Act's strongest pro-competitive mandates on rural companies. Thus, the purpose of Section 251(f) is to recognize that local service competition often involves serious risks to universal service in areas served by rural telephone companies and, consequently, to require a prior state public interest determination, rather than automatically granting interconnection rights.

There is little doubt that state commissions will terminate the exemption in some cases and will reject suspension petitions in others. Some areas served by rural rate of return customers have experienced competition, or will shortly. Regardless of when or whether their state regulators reduce or terminate their Section 251(f) exemptions, upon finding that the

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[26] §214(e)(2).

[27] Neither the exemption nor suspension provisions of Section 251 (f) prevent a new entrant from serving the area of a rural telephone company. They reduce the obligations of incumbent LECs to place their networks at the disposal of their competitors under terms more favorable than their customers enjoy. There are no exceptions to the interconnection obligations of Sections 201(a) and 251(a) and the provision on state barriers to entry in Section 253(a) remains in force.

statutory standards are satisfied, it is necessary that appropriate access rate structures be available to LECs that face competition. As noted above, the best answer in the long run is for the Commission to get out of the business of making incumbent LECs' business judgments. Throughout the transition to competition, however, these rural customers must be charged only rates that are "reasonably comparable" to rates in urban markets, as well as geographically averaged and comparable IXC charges, which, in turn, require either interexchange support, rural access charges that are not out of line with those charged by price cap LECs, or both.

Congress has already decided that rural ILECs' service characteristics require more careful scrutiny by state officials, lest measures to hasten competition wreak unintended harm in their rural markets. There is simply no justification in policy, law or fact for the Commission's apparent intent to shape its access charge regime for the vast majority of these rural ILECs to counteract what the Commission apparently perceives as the anticompetitive results of applying §251(f) as Congress wrote it.

III. IF THE COMMISSION ADOPTS ACCESS STRUCTURE REFORMS NOW, THE CHANGES SHOULD INCREASE PRICING EFFICIENCY, WHILE ENSURING COMPARABLE RURAL AND URBAN RATES, SERVICES AND NETWORK ADVANCES AND GEOGRAPHIC INTEREXCHANGE RATE AVERAGING

A. Some Additional Carrier Common Line Costs Can Be Recovered Via More Efficient Flat-Rated Access Charges

A major purpose of this proceeding (NPRM, para. 2) is to improve the efficiency of access cost recovery by reducing the recovery of costs that do not vary with usage via usage-based charges. The Associations agree that historical levels of usage based carrier common line recovery have not maximized efficiency. As explained above, given the different characteristics of ROR LECs, the main constraints on how much structural modification is appropriate for this

group of carriers derive from §254. Accordingly, if the Commission goes forward with interim changes now, the RTC agrees with the NPRM's tentative conclusion that ROR-regulated LECs should adopt a similar, but not identical, access charge structure to that of the price cap companies. The modified plan would encourage geographic toll rate averaging and comparable rural rates while increasing efficiency by recovering more, but not all, non-traffic sensitive costs through flat-rate carrier charges consistent with cost causation. The adoption of structure changes, however, can only be justified under the 1996 Act if sufficient and appropriate safeguards to universal service are detailed in interim rules, further decisions on other "expanded trilogy" issues are also consistent with §254, and the Commission is willing to reopen access charge issues to ensure a coordinated, comprehensive result. With these assumptions, the RTC agrees that recovery of a portion of ROR LECs' common line costs from IXCs should be shifted to the flat rate PICC.

B. To Comply with the Mandate for Comparable Rural Rates, No Interstate Charge May Exceed the National Average

The requirement in §254(b)(3) for reasonably comparable rural and urban rates, services ("including interexchange services") and access to advanced telecommunications and information services applies to any and all rates and services for rural customers. The requirement for interexchange comparability is further elaborated in §254(g), which obligates the Commission to require any IXC to charge its subscribers in rural and high cost areas at rates no higher than its rates for its subscribers in urban areas and to charge its subscribers in each state rates no higher than its rates for subscribers in any other state. The requirement for reasonable rate comparability applies equally to interstate SLCs and local exchange rates. Similarly, the comparability and nationwide rate averaging fiat applies to long distance rates and to any charge

passed through by an interexchange carrier to recover PICC charges it pays to a LEC. There is no hint in the statute that Congress intended anything other than what the plain language of the Act says — rural rates for "[c]onsumers in all regions of the nation . . . that are reasonably comparable to rates charged for similar services in urban areas" and interexchange rate parity both between rural and urban areas and among the states.

Marketplace forces alone will not satisfy §254's rural parity mandates because rate of return companies' costs are generally much higher than price cap companies. USTA and NECA have shown (see NPRM, para. 39) that simply extending the price cap LEC access charge structure to ROR LECs would result in SLCs and PICCs climbing immediately to the price cap LEC ceilings. They also indicated that most rate of return LECs' PICCs will keep rising, although the price cap LECs' PICCs will peak, decline and eventually disappear, and CCL costs will be reduced to zero for most price cap LECs. Therefore, to avert interexchange charge deaveraging and satisfy the §254(b)(3) mandate for reasonable rural and urban rate and service parity, PICC charges and any increase in multiline business Subscriber Line Charges (SLCs)[28] should not exceed each year's nationwide average for the price cap LECs' PICCs and SLCs. Without such nationwide caps, charges for ROR carriers' customers will be much higher than those for price cap companies' customers.[29] It is preferable to leave the excess rural costs, i.e., costs beyond the nationwide average ceilings, in the CCL for usage-based recovery, as at present. The resulting combination of flat and usage sensitive recovery will best balance efficiency and

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[28] All residential and business SLCs should remain at the current caps.

[29] The Associations understand that NECA will file data quantifying the extent of the disparity.